

cutting machine can be indexed and cutting can be done when the coated portion of the fabric reaches the cutting station equipment.

Applicants' claims specify that the coloring agent is visibly disposed on at least a portion of the fibrous tape and retained by the tape while the tape is in the soft state in the presence of the hardenable liquid resin, and, after hardening, there is no adverse effect on the coloring agent. The important distinction is that in Buese '159 the dye is mixed in with the binder and is not disposed on the tape. Moreover, there is nothing in Buese '159 that suggests dye stability and Buese's binder is for the sole purpose of preventing fabric raveling. Nothing in Buese '159 teaches or suggests the invention claimed.

The Examiner's rejection of claims 6-8, 10-11, 13-14, 16-18, 21-22, 25-27 and 29-30 as unpatentable over Buese '159 in view of Gasper is also traversed. The Examiner cites Gasper, at column 7, line 51 to column 8, line 11, alleging that it teaches an open mesh fabric comprising two coloring agents. A careful review will show that there is nothing in the Gasper reference about any coloring agents being on the fabric. The Gasper reference does not teach a coloring agent disposed on the tape and retained while the tape is in the soft state and after hardening by a liquid resin such that there is no adverse effect on the coloring agent. Adding the teachings of Gasper to those

of Buese '159 does not teach or suggest the claimed invention. Nothing in either reference suggests the disposition of the coloring agents onto the tape nor the stability of such coloring agent; both requirements are claimed by applicants.

The rejection of claim 28 over Buese '159 in view of Gasper and further in view of Parker is also traversed. The teaching of Parker as to cotton or synthetic fiber for bandages etc. does not supply the teachings shown above to be missing from Buese '159 and Gasper, i.e., neither teaches disposition of the coloring agent on the tape nor coloring agent stability.

The rejection of claims 31-33 over Buese '159 in view of Paxit is also traversed. Paxit produces sheet material for the "construction of roofs or patio coverings, or as fascia boards or decorative wall panelling. Such structures are not at all similar to the claimed "orthopedic cast bandage comprising open mesh fibrous tape." The teachings of Paxit are clearly from nonanalogous art and cannot properly be combined with references from analogous art to reject the claims. Use of teachings from nonanalogous art such as roofing material to be combined with art from cast bandages etc. would be a hindsight application of references. This rejection should be withdrawn.

The MPEP Requires Declaration of Interference

As pointed out in detail in applicants' Preliminary Amendment and Request for Interference Under 37 C.F.R. §1.607, in Part II (at page 6) thereof, applicants request prompt declaration of an interference with Scholz et al., U.S. Patent 5,342,291, issued August 30, 1994 (a copy of which was enclosed).

The Examiner has found applicants' claims 34-42 allowable. These are claims substantially copied from the Scholz patent claims (i.e., Scholz claims 1-3, 8, 10-11, 22, 28 and 17, respectively).

In accordance with the MPEP §2306, an interference should be declared if:

the application and the patent are claiming the same patentable invention, and at least one of the applicant's claims is patentable to the applicant.

The fact that some of applicants' claims are under rejection does not mean that the interference should not be declared. The Examiner is instructed at MPEP §2309.02 how to handle such claims in preparing PTO Form 850 to request the interference.

At pages 6-11 and Appendix B of the Preliminary Amendment, applicants have supplied all the information to assist the Examiner in completing PTO Form 850 and requesting the interference. If applicants' attorney can be of assistance to

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the Examiner in expediting this request for interference, please call at (215) 568-3100.

Respectfully submitted,

  
Francis A. Paintin  
Registration No. 19,386

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WOODCOCK WASHBURN KURTZ  
MACKIEWICZ & NORRIS  
One Liberty Place - 46th Floor  
Philadelphia, PA 19103  
(215) 568-3100

**Certificate of Service**

As required by 37 CFR §1.550(e), a true copy of this paper has been forwarded this date by first-class mail to the reexamination requester at the following address:

John R. Schiffhauer  
2200 Sand Hill Road  
Menlo Park, CA 92025

Date 11/27/95

  
Francis A. Paintin